sent case the witnesses gave evidence of their recollection of the last words spoken by the deceased and their evidence was, in our judgment, properly admitted.

At the conclusion of the hearing we were in no doubt that the trial judges were justified on all the evidence before them in finding the appellant guilty of the offence of murder.

For all these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Amarjit Rubin & Partners.*

DOVER TRANSPORT AND TRADING CO. & ANOR. v. SINGAPORE BUS SERVICE (1978) LTD.

[A.C.J. (Chan Sek Keong J.C.) August 8, 1986]
[Singapore – Magistrate Court Appeal No. 5 of 1986]

Tort – Negligence – Road accident – Conflict of evidence – Quality and credibility of witnesses.

Road Traffic – Negligence – Collision of lorry with SBS bus.

In this case, the second defendant, the servant of the first defendant, drove his lorry in such a way as to hit the rear view mirror of the bus driven by the plaintiff's driver. The accident happened along the 10 m.s. Woodlands Road whilst both vehicles were travelling in the same direction towards Upper Bukit Timah road. The Magistrate found the defendants negligent and gave judgment for the plaintiff. The defendants appealed.

Held, dismissing the appeal: the decision of the Magistrate was based substantially on his assessment of the quality and credibility of witnesses. In order to reverse, the court must not merely entertain doubts whether his decision was right but be convinced that it was wrong. In this case, the court was not convinced that the Magistrate was wrong.

Case referred to:

(1) *Whitehouse* v. *Jordan* [1981] 1 All E.R. 267, 276.

MAGISTRATE'S APPEAL.

Arul Anandan for the appellants.
John Ng for the respondents.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This appeal is against the decision of the Magistrate who found as a fact that the 2nd defendant, the servant of the 1st defendant, drove his motor lorry No. YC 1107 H which was carrying plywood in such a way as to hit the rear view mirror of the motor bus No. SBS 3355 H which was being driven by the plaintiff's driver. The accident happened along the 10 m.s. Woodlands Road whilst both vehicles were travelling in the same direction towards Upper Bukit Timah Road. Where the accident occurred, the road had two lanes for vehicular traffic and road works were being carried out on the road divider separating the dual carriageway at that stretch where the accident occurred. The bus was travelling on the left lane with about 3 feet clearance to the kerb and its rear view mirror was sticking out by about a foot across the white line separating the two lanes. The plaintiff's driver said that 2nd defendant suddenly overtook him but in doing so the plywood on the lorry hit against the rear view of the bus. He took evasive action by swerving the bus to the left and in so doing collided into the left kerb.

PW1, the bus driver, made two reports on the same day, one to the plaintiff and the other to the police. In both reports he stated that the lorry hit or grazed the rear view mirror.

PW2, the foreman who inspected the bus at 8 a.m. on the day after the accident said in his evidence in chief that the rear view mirror was broken but that he overlooked repairing it. In cross-examination, he however admitted that he did not have the mirror replaced because it appeared to have been replaced when he came to examine the damage to the bus; it looked new to him. He explained that it was usual to replace mirrors because the bus needed to be shifted around. He also said that any mechanic or panel beater could have replaced it if he had found it inconvenient to drive the bus around without a mirror and that there was no need to requisition for a mirror from stores because most panel beaters kept one or two spares in the locker.

The Magistrate accepted the evidence of PW1 and PW2 in preference to the evidence of the defendant's driver.

In his grounds of decision, the Magistrate gave the following grounds for finding the defendant negligent:

(a) the defence rested on a bare denial which did

not help in any way to substantiate a more probable case.

(b) it was highly improbable that the motor lorry could overtake the bus without grazing the right view mirror of the bus.

(c) PW1 was a more reliable witness than DW1.

(d) PW1's evidence was substantiated by that of PW2.

(e) there was no plausible reason why PW1 should suddenly swerve to the left and collide into the left kerb of the road.

Counsel for the defendant contended that ground (a) amounted to a reversal of the burden of proof. I agree, but only if the statement is read in isolation. In the context of the whole judgment, the Magistrate meant that the defendant had not rebutted the plaintiff's evidence. As for finding (b), there was evidence to show that the road was narrow, that the right rear view mirror of the bus extended into the right lane, that there were road works on the right lane, that the two vehicles were large vehicles, and that the lorry was carrying plywood which was protruding 6 inches from its left side. I cannot quarrel with this finding. As for ground (e), counsel for the defendant says that there may be any number of reasons for PW1 swerving into the kerb. That may be so. But the point of the Magistrate's finding was that it could not have been a coincidence that PW1 drove into the kerb at the time and place where DW1 overtook him. That was the implausibility. I see nothing wrong with the finding.

As for findings (c) and (d), the complaint was that PW1's evidence was not more reliable than that of DW1 and that PW2's evidence did not support PW1's evidence on the damage to the mirror. As to the first complaint, counsel for the defendant said that PW1 was an evasive witness because he did not answer in a forthright manner the questions of defendant's counsel on whether the lorry was travelling in its own lane and whether there were workers on both sides of the road. But the notes of evidence also show that DW1 also did not answer his questions in the same manner, particularly on how far he was from the bus when he first heard the 'bang'. All these matters were within the purview of the Magistrate. As he had the advantage of seeing and hearing the witnesses, I cannot disturb his finding on the relative credibility of the two witnesses.

As to the second complaint, the Magistrate accepted PW2's evidence "on this point" because it was a sensible and logical explanation. What was this point? What was this sensible and logical explanation? It was PW2's evidence that he believed that the right view mirror was damaged and replaced. Although the Magistrate did not expand on these findings, an examination of the evidence will show what he had in mind. The evidence was that PW2 saw a job card which referred to a damaged mirror; on inspection, he did not see a damaged mirror but a mirror which looked new to him (in comparison with the bus which was between 4 and 5 years old); he therefore concluded that the mirror he saw was a replacement; and when asked who could have replaced, he said that any mechanic or panel beater could have done it if he had found it inconvenient to drive the bus without a rear view mirror; on re-examination, he explained further that it was usual to replace broken mirrors on buses because during the night a bus might need to be shifted around. Counsel for the defendant did not directly put to PW2 that the mirror was not broken but skirted this issue by asking questions to elicit answers that the mirror was not broken. Having got the answers he did not want, counsel for the defendant now complains that DW2 was an unreliable witness.

DW2 can be said to be unreliable in the sense that his explanation for the replacement of the mirror was not and cannot be relied upon as evidence. It was pure conjecture as the mirror could have been replaced for any number of reasons by any number of persons than for those reasons and by those persons referred to by DW2. But this area of unreliability says nothing about the reliability of DW2's evidence that he saw a replaced mirror. If this evidence was believed, then it follows that as a matter of probability the previous mirror must have been broken. It appears to me that he accepted the evidence of PW2 that he saw a replaced mirror and also his explanation for replacing the mirror. As I have pointed out, the explanation was not evidence. But his statement that he saw a replaced mirror was evidence. He was believed.

There is another obstacle in the way of the appellant in this appeal. The finding of the Magistrate that only DW1 was to be blamed for the accident was based primarily on his acceptance of the evidence of PW1. The evidence of PW2 was only secondary and served to reinforce his belief in PW1's evidence. It has not been demonstrated to me that the Magistrate's decision would have

gone in favour of the appellant with PW2's evidence. In other words, even discounting the whole of PW2's evidence, the Magistrate found against the defendant on the oral evidence of PW1.

The decision of the Magistrate was based substantially on his assessment of the quality and credibility of witnesses. In order to reverse, I must not merely entertain doubts whether his decision is right but be convinced that it is wrong: see Lord Edmund Davies in *Whitehouse* v. *Jordan*[1] at page 276. I am not convinced that the Magistrate was wrong for the reasons given above.

Accordingly, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Wong & Partners; Tan, Lee & Partners.*

STATE v. 2Lt. FOO SAY CHIANG

[Mil. C.A. (Chua J. (President), Goh Heng Leong, Tan Kok Quan, Col. Lee Seng Kong & Lt.-Col. Loh Kum Kim) September 10, 1985]

[Singapore – Military Court of Appeal No. 4 of 1985]

Military Law – Misconduct – Officer ordering guards to lock their weapons when there was a show of force by trespassers – Whether act to the prejudice of good order – Singapore Armed Forces Act, 1972, s. 24.

The appellant, 2Lt. Foo Say Chiang, was from 1 SIR. He was charged for two offences contrary to the SAF Act 1972. On the first charge he was acquitted by the General Court Martial. He was, however, fined $500 on the second charge. He appealed. The second charge read as follows:–

"*2nd charge*
AN ACT TO THE PREJUDICE OF GOOD ORDER CONTRARY TO SECTION 24 OF THE SAF ACT, 1972,

in that he,

at 1 SIR, Guillemard Camp, Singapore, on 10 OCT 84 at or about 2359 hours without lawful authority ordered the guards to lock their weapons when there was a show of force by 1474325A SIM KIANG WEE, 1571367D PTE NYA KIM SIANG and 1685895A PTE HUI SENG THIM who were trespassers in the camp."

Held, allowing the appeal: although the order was a wrong order, it could not be said that the act of the appellant was prejudicial to good order and was culpable.

MILITARY COURT OF APPEAL.

Peter Low for the appellant.
Leong Hee Tean for the respondent/State.

Cur. Adv. Vult.

Chua J. (President) (delivering the Judgment of the Military Court of Appeal). This is an appeal by 2Lt Foo Say Chiang of 1 SIR against his conviction by General Court Martial on the following charge:

"*2nd charge*
AN ACT TO THE PREJUDICE OF GOOD ORDER CONTRARY TO SECTION 24 OF THE SAF ACT, 1972,

in that he,

at 1 SIR, Guillemard Camp, Singapore, on 10 OCT 84 at or about 2359 hours without lawful authority ordered the guards to lock their weapons when there was a show of force by 1474325A SIM KIANG WEE, 1571367D PTE NYA KIM SIANG and 1685895A PTE HUI SENG THIM who were trespassers in the camp."

He was fined $500.00.

He was also tried on the following charge but was acquitted:

"*1st Charge*
NEGLECT TO THE PREJUDICE OF GOOD ORDER CONTRARY TO SECTION 24 OF THE SAF ACT, 1972,

in that he,

at 1 SIR, Guillemard Camp, Singapore, on 10 Oct 84 at or about 2359 hours in the face of imminent danger of violence being used upon 1658301D 2LT CHUA KWONG MENG, the duty officer by 1474325A SIM KIANG WEE, 1571367D PTE NYA KIM SIANG and 1685895A PTE HUI SENG THIM who were trespassers in the Camp, he (the accused) did not render any assistance and to prevent PTE NYA KIM SIANG from damaging the telephone at the Unit guard room."

After hearing the appeal we allowed the appeal and now give our reasons.

The facts were these. On the night of October 10, 1984, Cpl Yap Bock Seong was the Guard Commander and 2Lt Chua Kwong Meng was the Duty Officer (DO). At about 2359 hours Cpl Yap received orders that there was going to be stand-to. He gathered the guards and issued them ammunition. Then the DO came and stood outside the guardroom.

At about that time a party of four persons appeared at the main gate of 1 SIR, Guillemard Camp, and wanted to come in. The guard 2IC went to seek the instructions of the DO, who said